

Board of Zoning & Appeals

MINUTES

(Via Tele-Conference)

May 6, 2020

MEMBERS PRESENT: John Kester, Ede Graves, Brenda Bessinger, Johnny Wilson, & Sandra Quinn

MEMBERS ABSENT: James Dozier

OTHERS PRESENT: Angela Rambeau, Rick Martin, Matt Millwood, Elise Crosby, & Debra Grant

- I. **Call to Order**
- II. **Public Hearing: None** (*Mr. Jonathan Heald deferred his comments to after the application for Georgetown Tree Service was presented*)
- III. **Approval of Minutes for March 4, 2020;** Ms. Graves made a motion to approve the minutes as written; seconded by Ms. Bessinger; the motion carried 5 to 0 by a roll call vote.
- IV. **Variance and/or Appeals Request:** (*Mr. Kester swore in all that were going to speak*)

V#20-04 **Oxner and Stacy Law Firm**, property owners of 235 Church Street, LLC (TMS #05-0056-015-01-00), are requesting an appeal to the Zoning Administrator's interpretation of the City of Georgetown Zoning Ordinance. **Angela Rambeau/Department Head of the Planning & Community Development for the City of Georgetown**, stated the history of the project; the listed property is zoned General Commercial (GC) and in 2012, the building that was formerly Wendy's Restaurant, was converted into an office building which housed Oxner & Stacy Law Firm. Within that same year Mr. Oxner was given the approval to operate another business from that location and on the same site, the Marine Related Storage Facility, which included an accessory structure for boat storage in the rear. Between 2013 and 2016, four (4) storage units were allowed to be constructed, these units are now grand-fathered. In December 2019 Mr. Oxner submitted a building application to enlarge the existing storage units, and the permit was denied. Mr. Oxner chose to appeal the decision of the Zoning Administrator, and this is why we are here tonight (*all supporting permits and zoning ordinances are included in the packets*).

In May 2012 Elizabeth Tucker the Director of Community Development at the time, wrote a letter giving Mr. Oxner the permission to operate two business out of the same office. The previous approvals for the two businesses and the storage units are all grandfathered, however they cannot be allowed to make a non-conforming use, more non-conforming (*ref. Article IV; Section 400/sub-section 400.4*). If this is done they would lose their grandfather status and would have to come into compliance with the current zoning ordinance. The denial of the permit submitted by Mr. Oxner in December 2019, led Mr. Oxner to appeal based on the fact that the administration decision was contrary to the previous 2 decisions, and he feels that different people are interpreting the same ordinance in a different way. However, the accessory structures ordinance has in fact been revised as of 2018; the 2012 ordinance allowed up to 3 structures not to exceed 600 sq. ft. in gross surface area. The 2018 revision allows up to 10% of the gross square footage of the commercial parcel. **Ms. Rambeau** said what was permitted in the past is there and is grandfathered. When it comes to additions and new structures, any

new permits would be bound to the current ordinance in effect, therefore the permit that was submitted in December 2019 was denied (*the denial letter was found on page 22 of the packet*), for the following reasons:

1. Each lot/parcel is permitted to have one principal building.
2. One principal use on a lot; because of the letter of approval from Elizabeth Tucker there was 2 uses which is grandfathered, however it cannot be enlarged or altered.

As stated earlier they cannot make a non-conforming use more non-conforming, and any proposed additions would do that. Staff did give Mr. Oxner five (5) alternatives of relief of the situation as stated in the memo to the Mayor (*page 21 of the packet*):

1. Appeal the decision to the Board of Zoning Appeals.
2. Apply to the Board of Zoning Appeals for a variance.
3. Subdivide the property.
4. Draft a text amendment.
5. Leave as is and continue operation as grandfathered.

Mr. Kester said this is all confusing, however he was looking through the zoning ordinance at Section 310.3 “**Principal Building**”: **A building in which is conducted the main or principal use of the lot on which said building is located**, and Section 703 “**Zoning District Use Classifications Chart**” and he found the listing for “Offices” (Business, professional, government); **Mr. Kester** asked if this situation would fall under “Offices”. **Ms. Rambeau** said yes this would be classified as “Offices”. **Mr. Kester** said he might be interpreting the ordinance wrong, but asked if they would be seen as an office? **Ms. Rambeau** said it is an office with 2 uses, which is prohibited under the ordinance unless it is a shopping center (*ref. page 24 of the packet; Section 503*). **Mr. Kester** asked if this was not something that was allowed, why it was allowed previously. **Ms. Rambeau** said she cannot speak to something that was done in 2012 and under a different Director; she assumes that Director interpreted the ordinance differently. **Mr. Kester** said it was strange that it was approved twice before and now it is being denied. **Ms. Rambeau** said the Zoning Administrator in 2012 based his approvals on the letter of approval written by then Director, Ms. Tucker. **Ms. Bessinger** asked how many storage units are being requested. **Mr. Oxner/Applicant** said they would like to construct 5 more units on each side of the existing front units (*totaling an additional 70 ft.*). **Mr. Dan Stacy/Applicant** referenced page 26 and 29 of the packet to show the 2 front units that would be expanded if allowed. **Ms. Graves** said she doesn’t know how the request could be considered, because the applicants had already gone so far off from what is allowed by zoning. **Mr. Oxner** said “this appeal is requested by 235 Church Street, LLC and not Oxner & Stacy Law Firm, and no neighbors are in opposition of this request. He goes on to say there has been 4 permits issued for the construction of the units, and this is a request for modifications of the existing buildings, and therefore should be grandfathered in. There has been 2 administrators that have interpreted the ordinance the same way and have allowed the project, so for it to now not be allowed, is unfair. Today’s zoning administrator is willing to allow the expansion if the lot is sub-divided, so the issue is semantics. The city should be trying to help the citizens that are trying to build the tax base, instead of trying to block them at every angle and opportunity.” **Mr. Oxner** said the reason they do not want to sub-divide the property is because it would raise their taxes tremendously, and the loan for the office building and the other business is combined and it is not certain if that could be done through the bank at this time. **Mr. Oxner** also said Rick Martin in the Building Dept. has already signed the permit

that was submitted in December, so it is a matter of opinion. Mr. Oxner feels the reason for the denial is changing, (*ref. page 22 of the packet*) says it is denied because of 2 uses, and that has already been approved. In Mrs. Tucker's letter it states that the units were an accessory to the sales office, not the Law Firm (*page 10 of the packet*). This request will benefit the community and residents that need storage for their boats. (*Mr. Oxner stated that he wanted to call Mr. Rick Martin/Zoning Administrator/Building Official as a witness. Ms. Elise Crosby/City Attorney said that Mr. Oxner could ask Mr. Martin questions only as a matter of opinion*). **Mr. Oxner** asked Rick Martin if he approved the building permits in 2014 and 2016 as the Zoning Administrator. **Mr. Martin** said yes he did. **Mr. Oxner** asked if he had indeed sign the permit submitted in December 2019. **Mr. Martin** said he did sign the permit as the Building Official, however the permit went to zoning for approval and that was the approval that was not given. **Mr. Dan Stacy** said they were caught in the middle of this project, they were told that this type business was appropriate for this property; there was a zoning ordinance change in 2018, which leaves them in a place that is difficult for them to complete the project. **Mr. Stacy** said financially, for the property to be sub-divided and refinanced it would cost approximately \$10,000 and additional fees. It is possible to move forward and complete the project by sub-dividing, however they would like to do this in the most cost efficient way. The request is to get a continuation of the previous 3 interpretations that were given. **Ms. Sandra Quinn** asked if the 10 additional units are not allowed, would it restrict the reasonable use of the property, and if the only reason for the request was for financial benefit, and is it a compelling need. **Mr. Stacy** said no it would not restrict the use of the property, he is unclear if it is a compelling need, however, they do have people on a waiting list to use these facilities since the City of Georgetown supports the boating world. **Mr. Stacy** also said he doesn't feel the financial gain is something for this board to consider; they would just like to complete a project that they started. **Mr. Kester** said he feels that some projects are done in phases, and the owners went into this project thinking that they could do it in phases, the ordinances did change and it is the City Staff's (Matt Millwood) responsibility to enforce the ordinances, and that is what the staff is doing. **Mr. Kester** said that the owners can do what they need by jumping through some additional hoops, however when applicants are seeking a variance they do have to prove that it would cause an unnecessary hardship, if the zoning ordinances were strictly adhered to. **Ms. Crosby/City Attorney** reminded Mr. Kester that this was not a request for a variance, but an appeal to the Zoning Administrator's decision. **Mr. Kester** said he was aware that the request is not for a variance, however because they have never handled a case like this before, he wanted to correlate this case with what they usually do. **Mr. Kester** said he feels because this project can be done by going through another route, and would cost the owners time and money to do it, and they have been approved twice before, it would not be a benefit to the City of Georgetown to make them sub-divide the lot. **Ms. Graves** said she feels that a decision should adhere to the Zoning Ordinance that is in place at this time, and their decisions should be consistent. **Mr. Kester** said he agreed that setting a precedence is important. **Mr. Dan Stacy** said unlike another applicant that may come along in the future, he feels their situation is unique because they were given building permits 3 times for this project, and he doubted that there would be another project that would come before them that is ¾ of the way completed, dealt with an ordinance change, and a change of personnel that interprets the ordinance, with those points he doesn't feel that this case would cause a slippery slope because of the unique facts and

circumstances. **Ms. Quinn** asked again if by denying this appeal, would the board be unreasonably restricting the use of the property by the owners or are there an adequate amount of units in place now. **Ms. Crosby/City Attorney** said once again that the question Ms. Quinn was asking was one that would be relevant to a variance request, this matter is not for a zoning variance, but for the appeal of the Zoning Administrator's decision. **Mr. Kester** said he was confused on what they are allowed to consider on this request. **Mr. Oxner** said what he feels needs to be considered is the fact that the Zoning department is not saying no, but instead "do it my way" which would cause undue burden on himself and Mr. Stacy by doing that. **Mr. Oxner** also said the decision is not as clear as the City would have them to believe, he said if it was why did two other Zoning Administrators prior to Matt Millwood, come up with a totally opposite decision, and if it is a matter of interpretation, then he feels they should be given the benefit of the doubt because it has already been approved 3 times, and that decision will end this project and they will not have to come back before this board again.

Motion: Ms. Bessinger made a motion to support the decision of the Zoning Administrator, and deny the appeal of the applicants; seconded by Ms. Graves; the motion carried 3 to 2 by a roll call vote (Mr. Kester and Mr. Wilson cast the downward votes)

V#20-05

Georgetown Tree Service, property owners of 118 Cleland Street (TMS#05-0026-101-00-00), are requesting a variance to Article X (Signage Setback) of the City of Georgetown Zoning Ordinance. **Matt Millwood/City Staff** told the board that the property is zoned General Commercial, the owner has met all the city requirements as far as installing a fence and screening the fence, however after installing the fence the owner wanted to install a sign, but does not meet the 10 ft. setback from the sidewalk and the front property line, and the city prohibits signs on fences. Mr. Stevens does not meet that 10 ft. requirement and is seeking a variance for the 10 ft. The sign will be a 3 x 6 metal sign on posts, and it does meet all other requirements. There were a few phone calls asking about the request, and most of them did not have a problem with the request, however a tenant at 120 Cleland St. did complain about noise issues. **Ms. Quinn** asked if the screening was required by the city or just the fence. **Matt** said the screening is required; the ordinance requires a screening between General Commercial from any residentially zoned district, of either a 6 ft. fence or a landscape buffer. **Ms. Quinn** asked did the fence have to go where it is located or could it had been put further back. **Matt Millwood/City Staff** said it could have been installed further back. **Ms. Graves** asked if the Board allowed him to install the sign on the fence that would mean they would have to grant 2 variances. **Matt Millwood** said yes, they would have to give a variance to the prohibited signs and the setbacks, however if approved the sign will look like it is on the fence, but will be right outside the fence on the post. **Mr. Kester** said this is unique because usually there would be a building that would have to meet the setbacks and the sign would be within the setback, however this property is for parking of his business trucks. *(Mr. Kester swore Mr. Stevens in)* **Mr. Stevens/Applicant** said the reason his fence was placed so close to the property line is because of the turn radius of his trucks. **Ms. Quinn** asked Mr. Stevens if he had an office at another location or if this site was his only site in the city. **Mr. Stevens** said he does have a small office at the back of the property that cannot be seen from the street, and he does not have another location within the city. **Mr. Jonathon Heald/owner of the neighboring**

property, 120 Cleland Street commented on 2 issues from **page 33; #2-d** “The authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance.....” **Mr. Heald** said he believes Mr. Stevens does have every right to do what he wants with his property under and within the law, however he has chosen this property, added barb wire fencing, and his office is in the rear of the property, which is a detriment to his property, and has his tenant very upset, because she can hear him and his workers on a daily basis. **Mr. Heald** says he may lose his tenant and may not be able to rent this property, and that would be a detriment to him financially. **Mr. Heald** said he thinks it would have been a better design for Mr. Stevens to not install a fence but to use landscaping and placed his office building forward to consider the fact that he was in a residential neighborhood, and if these things were done there would be no need for a variance, because he could install his sign up 10 ft. back per the code. **Mr. Heald** also said by choosing to install the fence with the barb wire which makes his property looks like its next to a prison. The other issue was concerning **page 33; #2-A** “There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows”, **Mr. Heald** said this problem is of Mr. Stevens own choice to put the fence on the property line, and he can put the sign up, it just won’t be seen, or he can move the fence back. **Mr. Stevens/Applicant** said the building was initially put on the front of the lot and he was approached by the city to move the building because it would prevent them from entering the lot with the trucks, which are long with trailers. The tenant next door has been very rude to them, and **Mr. Stevens** said he can’t understand how there can be unwanted noise from his property when the Steel Mill is just a stone’s throw away and the noise from the mill makes it hard for him to hear in his office without closing the door. Furthermore, **Mr. Stevens** said there is no business conducted on his lot, they are gone all day. The reason for the security fence is to secure his tools, like chainsaws, that he needs to operate his business. **Mr. Stevens** said they want to be good neighbors. **Ms. Graves** asked if the property was bought to conduct his business. **Mr. Stevens** said yes he purchased it for his business. **Ms. Graves** asked if no one comes to the lot to conduct business a sign could be put anywhere on the property. **Mr. Stevens** said there are several distributors such as the company that delivers the company uniforms that need to be able to find them, currently there is no name or address to identify the business and the sign will be for advertisement. **Mr. Stevens** also said the name of the business “Georgetown Tree Service” was chosen to honor the town and they want to proudly display the name. There are neighboring businesses that have signage and he is not sure if they have people that come in to their business. **Ms. Quinn** asked if there was anyway there could be a compromise, where people will be able to see the address of the property. **Matt/City Staff** said the number address is allowed and can be put anywhere, but off-site signs are not allowed in the city at all. **Ms. Bessinger** said Mr. Stevens needs signage just like every other business in town. **Mr. Kester** said he did choose to put the fence where he did. **Ms. Bessinger** said the fence was put on the property line because of the turn radius of the trucks and his equipment. **Ms. Graves** said he did purchase the property knowing the size of his equipment. **Ms. Quinn** asked if the signage can be put on the gate. **Matt/City Staff** said in the past there was a Council member that lives in a residential neighborhood and argued that his sign was on his gate and not the fence. **Matt** said as he interprets the ordinance the gate is a part of the fence, and if this is allowed then every business would have to be allowed to have a sign on their gate. **Ms. Quinn** asked if maybe the size of the sign could be

adjusted. **Ms. Regina Hassle/Office Manager** (*was sworn in*) and said she is the only one at the building all day and she does have vendors that come in and have to try and give landmarks to get them to her office. There is also a safety issue because she is there by herself all day. **Mr. Heald/Property owner of 120 Cleland Street** said there has to be an undue hardship for a variance to be granted, and feels there is no hardship, if the owner moved the fence he could install the signage.

Motion: Ms. Bessinger made a motion to grant the 10 ft. variance to allow the installation of the signage. (*Because no one second the motion the motion failed*)

Motion: Mr. Wilson made a motion to deny the request for a 10 ft. variance; seconded by Mr. Kester; the motion carried 4 to 1 by a roll call vote. (*Ms. Bessinger cast the downward vote*).

V. Adjournment: With there being no further business the meeting was adjourned.

Submitted By,

*Debra Grant,
Board Secretary*